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This newsletter is published by the law offices of Benjamin W. Glass, III & Associates, P.C. It is for informational purposes only and no legal advice is intended. Each case is different and you are invited to discuss your legal question with Mr. Glass at no initial cost.

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Malpractice - Accidents - Insurance Disputes

\$866,000 verdict in truck accident Corporation refused to accept responsibility, even though its driver said, "It's all my fault"

We have all heard of frivolous cases, but little is said of corporations and insurance companies who mount frivolous defenses in cases where they have no real defense. Ben Glass believes that the "court system is clogged because insurance companies oftentimes take cases to trial just to make things difficult for the injured claimant."

In September, a Fairfax jury awarded one of our clients almost \$900,000 for injuries sustained after an 18-wheel truck crossed the center line of a highway and struck him head-on. William James of Manassas suffered extensive orthopedic injuries in the accident. He has had two surgeries and, according to expert testimony at trial, faces up to four more surgeries over his lifetime.

The accident happened in late 2001 when the driver of the truck rear-ended another vehicle before crossing into oncoming traffic. The truck was being driven for Envirite, Inc., a company that specializes in transporting hazardous materials.

The case should never have gone to trial! Envirite's driver had pleaded guilty to causing the accident and testified at trial that he was responsible for the accident. Envirite knew that he was going to testify this way because that's exactly what he had said in his pretrial deposition given months before trial. There were two independent witnesses to the collision who also blamed the truck driver, and the defense never even interviewed them. Despite this overwhelming evidence, Envirite never accepted responsibility for Mr. James' injuries and instead tried to shift the blame to a small van that the truck driver had rear-ended. The jury deliberated about 30 minutes before returning its verdict. After filing motions asking the court to throw out the verdict, the insurance company paid \$850,000 to settle.

New government report (again) debunks medical malpractice "crisis" **Report's release timed to minimize publicity**

Remember those commercials you saw this past summer—the ones where "patients" were lamenting the fact that there were no physicians in town anymore? There were shots of empty emergency rooms with a "reminder" that a "medical malpractice crisis" was again upon us. Congress was debating whether or not to impose draconian limits on recoveries as a part of federal law. The American Medical Association asked Congress to study the problem.

Do you know what this independent study found? While it found that in some "scattered, rural areas" there was decreased access to services affecting emergency services and newborn deliveries, "many of the reported physician actions and hospital-based service reductions were not substantiated or did not widely affect access to health care." Congress did not fall for the lies of the insurance industry this time, but we know the battle is far from over. You can get the entire GAO report at our Web site. Look under the Consumer Information section. By the way, you may have missed seeing this in your local newspaper. The report was released the Friday afternoon of Memorial Day weekend!

Ben Glass pleads guilty to bribery

Last issue, we offered free copies of the book *Damages* to those who contacted us. As you can imagine, the response was overwhelming. Within days of our newsletter hitting the mail, we had mailed out all of the books we had.

This time, we have more excellent books—but you have to work for them (a little bit, at least). I would like to know more about what the public thinks about attorney print advertising, and I need your help. I am willing to “bribe” you for your assistance. I want you to find me the best lawyer ads you can. You can look in the telephone book, the newspapers, or magazines. Fax or mail the best ads to me. (Fax to **703-783-0686**.) Tell me why you think these ads are any good—why would that ad make you call that lawyer if you had a case? Finally, tell me what you would like to see—but rarely do—in attorney print advertising.

Now, don't think that you will get a prize just for ripping any old ad out of the book. I want you to be thoughtful about this.

What am I bribing you with? We have 12 books to offer. For the two best responses (the ads and comments that really make me say, *Gee, I wish I had thought of that*), I am going to send you *A Measure of Endurance—The Unlikely Triumph of Steven Sharp*. Just published, this book tells the story of a young man who lost both of his arms in an accident involving a defective hay baler. It follows the legal battles against a multibillion-dollar company and, more importantly, Steven's heroic battle back to a productive life. You can run to the bookstore to buy this book retail for \$24, or you can start faxing those lawyer ads.

For the next ten best entries, I will rush you Gerry Spence's book, *How to Argue and Win Every Time: at Home, at Work, in Court, Everywhere, Every Day*. Spence is one of the country's most successful attorneys, and this book is a real gem. You will learn how to get your point across in every situation imaginable. I'll be paying off the bribes on December 15, so don't delay.

I guarantee that you will not be disappointed with either of these books.

STOP CHECK FRAUD

You can shield yourself against check fraud by taking some simple steps.

- **Use initials** instead of your first and middle names when you order checks from your bank. Check thieves will be less confident about endorsing them.
- **Shred** credit-card and other receipts that go in the trash.
- **Write only the last four numbers** of your account on any check to pay your credit-card bill. No one can copy your account number.
- **Seal** checks in security mailer envelopes.
- **Review cancelled checks and statements** during reconciliation to look for alterations or inappropriate transactions.
- **Protect deposit slips** since thieves can make bad-check deposits and take cash back.
- **Patronize** retailers that use fingerprints or electronic check-fraud software systems.
- **Report check fraud** to financial institutions and law enforcement immediately.
- **Obtain victim assistance or legal counsel** if fraud leads to emotional problems or serious financial loss.



FOR YOUR SAFETY Recalled product roundup

Here are some recently recalled products you may have in your home or at work.

- ✓ **Dorel Juvenile Group, Inc.**, has called back 670,000 of its Cosco Arriva and Turnabout infant car seats/carriers, which have carry handles that can loosen and harm children.
- ✓ **Homier Distributing Co., Inc.**, has recalled 150,000 extension cords, 180,000 portable lights, and 54,000 fluorescent work lights. The products have undersized wiring, faulty electrical connections, incorrect polarization, inadequate grounding, and plastic handles that can shock and burn users.
- ✓ **Stihl, Inc.**, has asked buyers to return 13,000 chain saws with incorrectly installed fuel tank vents that can dislodge and catch fire.
- ✓ **Conceptual Marketing & Development, Inc.**, has recalled 1.1 million Model 4650 metal weed-cutting attachment blades, which can snap off and injure consumers.
- ✓ **Lane Furniture Industries, Inc.**, has called back 620,000 high-leg recliner chairs. A mechanism can pinch and injure consumers who reach under the chair to operate the footrest.
- ✓ **Central Sprinkler Company**, an affiliate of Tyco Fire Products, LP, announced it will voluntarily replace 35 million Central fire sprinklers that have faulty O-ring seals. Consumers can hire their own contractors and obtain reimbursement for all or some of the labor charges after notifying Central in advance and completing certain forms.

Medical malpractice testimony

Under attack by medical societies

The rights of victims of medical malpractice are under attack from many quarters. Legislators, insurance companies, pharmaceutical manufacturers, and others falsely argue that out-of-control lawsuits and overly sympathetic juries granting large awards are responsible for medical malpractice premium increases.

A new intimidation tactic recently initiated by medical societies in some states is causing medical experts who testify on behalf of medical malpractice victims to think twice before going to court. The medical societies are establishing medical tribunals to review the testimony of doctors who go to court. If medical testimony fails to meet terms and conditions, the societies can suspend or expel the physicians from society membership.

As a result, some expert-testimony doctors fear appearing in court because they worry about retaliation by their peers in medical societies. This is notably true in higher-risk medical specialties such as neurosurgery, gynecology, obstetrics, and anesthesiology.



Medical societies are establishing medical tribunals to review the testimony of doctors who go to court. If medical testimony fails to meet terms and conditions, the societies can suspend or expel the physicians from society membership.

Opponents of medical tribunal review say that the process is designed not to protect patients, but to inhibit doctors from testifying by intimidating them with sanctions or banishment. Some go so far as to claim that the process actually obstructs justice. Not only that, many also believe that America's legal system is set up so that judges and jurors are perfectly capable of evaluating evidence—including expert medical testimony—and rendering fair and reasonable judgments in medical malpractice cases. Opponents also point out that medical societies' demands for peer review for expert testimony for plaintiffs may not be equally applied to testimony paid physicians provide for deep-pocket medical malpractice defendants and insurance companies.

The insurance company laughed at us when we said it had to pay *But when we sued it for bad faith, it folded without a fight*

In January of this year, we helped Jennifer M. (a minor) and her parents obtain a \$155,000 verdict in Prince William County for injuries Jennifer suffered in a one-car accident. The driver of the car in which Jennifer was riding, also a minor, filed for bankruptcy protection before trial. She did not have enough insurance to cover the claim. (Ask us for our Special Report on Uninsured Motorist Insurance Coverage—How You Can Protect Your Family Against Irresponsible Drivers.)

In our presuit investigation, we found that Jennifer's father had an insurance policy that he bought to protect his business. When we read the policy, we were surprised to find that it provided coverage to his family if they were injured by an uninsured driver. This was unusual, but the insurance company had been collecting a premium for this coverage. (Full credit to my former associate, Dean Robinson, for first noticing this unusual policy language.)

We told this insurance company that we felt there was coverage, but it laughed at us. During the accident lawsuit, it refused to acknowledge that Jennifer's claim was covered.

We investigated further and found that this same insurance company had filed a lawsuit years ago in Maryland to have a court interpret this policy. In that lawsuit (probably because it benefited the insurance company in that case), this company argued that a family member like Jennifer would be covered under this policy.

We obtained the insurance company's written court pleadings and the transcript of its own lawyer making this argument. We sent these documents to the insurance company and asked it to reconsider its position. It refused to change its mind.

After the automobile case was finished, we sued this insurance company. We alleged that it had breached its contract and that, in light of the Maryland case, it was acting in bad faith here in Virginia. We must have struck a nerve with the lawsuit! Before it filed an answer, it paid everything it owed, PLUS INTEREST! Jennifer and her family were finally able to recover everything the jury had awarded.

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INSURANCE DISPUTES
WRONGFUL DEATH

JUROR JUSTICE

An angry Ohio jury made Allstate Insurance pay \$1 million in punitive damages to a client because the insurance giant responded in bad faith on a legitimate \$50,000 accident settlement.

Leveling the Playing Field Between You and the Insurance Companies

ERISA expert Juliet Purll joins the team

As many of you know, denials of employee benefits under ERISA are exploding. It seems that the major disability insurance companies are bound and determined to improve profits by denying or terminating claims. We get calls and e-mails from all over the country from people who tell us that they cannot find an ERISA-experienced attorney to help with their claim.

We found her!

We are excited to announce that **Juliet Cheheyl Purll** has joined our firm. Juliet is an ERISA attorney who most recently worked with a respected employee benefits law firm that represented the other side. She has spoken to the American Bar Association's Tort & Insurance Practice Section on the subject of employee benefits. Ms. Purll's experience centers on ERISA compliance and other aspects of advising employers. (In other words, she actually likes digging into the ERISA regulations—those regulations make the IRS regulations look like my three-year-old's first book!) If you are a current disability benefit client, you probably have already spoken to Juliet over the phone.

Ms. Purll graduated from George Mason University School of Law, which is one of the top 40 law schools in the country. She will practice in the state and federal courts. She is also a member of the Fairfax and Arlington Bar Associations.

Ms. Purll left her parents in New England to pursue adult life in the nation's capital. She plays and coaches ice hockey, and that's where she met her husband Brian. They live in a house in Arlington with their dog Stanley.



Rachel is here!

As most of you read in our last newsletter, we were awaiting the arrival of **Rachel Eileen-Caifeng**, daughter of Terry Patterson (Ben Glass's assistant) and her husband Tony. Rachel arrived in the United States from Changsha, China, on September 19, 2003. She is 18 months old and thriving in her new home. Rachel was welcomed home by big sister Grace, but quickly let Grace know who really rules the house!



We are thrilled everyone arrived safely, and we all look forward to cousins Kevin Glass (see the Fall 2003 newsletter welcoming Kevin from China), Grace, and Rachel growing up together, enjoying the wonderful opportunities of life in America.